

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF:
TAB Holding Company, Inc.
Harrison County, Iowa

ADMINISTRATIVE CONSENT ORDER

NO. 2012-SW- 02

TO: Bill Ringsdorf, President
TAB Holding Company, Inc.
4153 S. 67th Street
Omaha, NE 68117-1001

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (Department) and TAB Holding Company, Inc. (TAB) for the purpose of resolving solid waste disposal violations. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements:

Holly Vandemark, Environmental Specialist
Field Office 4
1401 Sunnyside Lane,
Atlantic, Iowa 50022
Phone: 712/243-1934

Relating to legal requirements:

Carrie Schoenebaum, Attorney for the DNR

Iowa Department of Natural Resources
502 East Ninth Street
Des Moines, Iowa 50319-0034
Phone: 515/281-0824

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TAB Holding Company, Inc.

10, which authorize the Director to assess administrative penalties, the Department has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. TAB is registered with the Nebraska secretary of state. It is a general contracting company which operates out of Omaha, Nebraska.
2. On October 14, 2010, the Department received a complaint alleging illegal dumping of a sludge like material near a waterway that drains into DeSoto Bend National Wildlife Refuge.
3. On October 15, 2010, Dan Stipe, an Environmental Program Supervisor with the Department, investigated the complaint. He determined that the complaint site was Section 19, T78N, R45W, Cincinnati Township Harrison County or Section 24 T78N, R46W, Cincinnati Township Harrison County. While on site Mr. Stipe met with Mr. Ringsdorf who stated that his company placed the material at the site because the solid waste was a liming agent. Much of the solid was had already been incorporated into the soil at the time of the investigation, however it is estimated that approximately 80,000 gallons or 20 tankers at 4,000 gallons each was disposed of. The solid waste was slurry created by the grinding of a highway surface.
4. On October 21, 2010, Mr. Stipe confirmed via e-mail with the Iowa Department of Agriculture that TAB was not a licensed lime dealer in Iowa.
5. On November 1, 2010, the Department sent TAB a Notice of Violation via certified mail informing it of the violation and that the matter would be referred to the Department's Legal Services Bureau for further enforcement.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.
2. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and TAB agrees to do the following:

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TAB Holding Company, Inc.

1. Cease the illegal disposal of solid waste;
2. TAB shall pay a penalty in the amount of \$3,000.00 to the Department within 30 days of the date the Director signs this order.

VI. PENALTY

Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter. Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the Department consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." The exact economic benefit from the illegal disposal of solid waste is unknown however it is reasonable to estimate that through saving of time and disposal fees \$500.00 of economic benefit was realized by TAB. Therefore, this amount is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of violation is the amount of penalty authorized by the Iowa Code for that type violation. Substantial penalties are authorized by the Iowa Code for this type of violation. Despite the high penalties authorized, the Department has determined at this time the most equitable and efficient means of resolving the matter is through an administrative consent order. Improper solid waste disposal threatens the environment because it can degrade water quality and contribute to contamination of land as well as threaten public health. Therefore, \$1,000.00 is assessed for this factor.

Culpability - The solid waste disposal regulations have been in place for more than 20 years. Companies in Iowa have a duty to remain knowledgeable of the Department's requirements and to be alert to the probability that their conduct is subject to the Department's rules. Based on the above considerations, \$1,500.00 is assessed for this factor.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: TAB Holding Company, Inc.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of TAB. For that reason, it waives its rights to appeal this order or any part thereof.

VIII. NONCOMPLIANCE

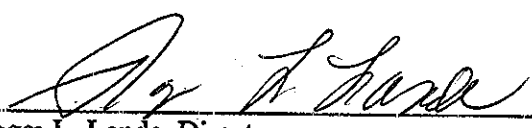
Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B 307.



Bill Ringsdorf, President
TAB Holding Company, Inc.

Dated this 6 day of

JANUARY, 2012.



Roger L. Lande, Director
Iowa Department of Natural Resources

Dated this 23rd day of

JANUARY, 2012.

Carrie Schoenebaum; DNR Field Office 4; EPA; VI C and VII C.1.